IN RE:	
BRIAN DEWAYNE SMELLEY,	Case No. 20-42656-mar
	Chapter 7
Debtor.	Hon. Mark A. Randon

# SECURED CREDITOR AMERICREDIT FINANCIAL SERVICES, INC., D/B/A GM FINANCIAL'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY

Secured Creditor AmeriCredit Financial Services, Inc., d/b/a GM Financial, pursuant to Section 362 of the United States Bankruptcy Code, moves this honorable Court for entry of an order granting it relief from the automatic stay and, in support thereof, says as follows:

- 1. Debtor initially filed this bankruptcy as a Chapter 13 case on February 25, 2020 and it was subsequently converted to a Chapter 7 case on March 26, 2021. At the time of filing, Debtor was indebted to Secured Creditor on a 2014 Ford Focus motor vehicle loan. The current balance on the loan is \$14,373.19 and the current arrearage on the loan is \$3,455.66; photocopies of the Retail Installment Contract and RD-108 evidencing the lien are marked as composite Exhibit A and attached hereto.
- 2. Under the terms of the contract, monthly payments are to be made to Secured Creditor. Prior to the filing of the bankruptcy, Debtor defaulted under the terms of the contract by failing to make the payments due and Debtor is currently in default under the terms of the contract with Secured Creditor.
- 3. The NADA retail value of the 2014 Ford Focusis \$13,600.00; a photocopy of the NADA valuation is marked as part of composite Exhibit A and attached hereto.

4. Secured Creditor is entitled to an order granting it relief from the automatic stay with

regard to the aforementioned vehicle because there is no equity in the vehicle, the Debtor has not

provided adequate protection, nor offered to provide adequate protection, to Secured Creditor, the

vehicle is not necessary to Debtor's reorganization, the Debtor is in default under the terms of the

contract with Secured Creditor, and the Debtor has not reaffirmed the loan, redeemed the vehicle.

nor surrendered the vehicle. Also, upon information and belief, Debtor is not maintaining full

insurance coverage on the vehicle.

5. Before filing this Motion, Creditor sought the concurrence of the Debtor and the Trustee,

but concurrence has not been granted or Debtor has, and/or the Trustee has, not responded to the

request.

WHEREFORE, Secured Creditor AmeriCredit Financial Services, Inc., d/b/a GM Financial,

prays that this honorable Court grant its Motion and enter an order granting it relief from the

automatic stay to exercise its lien and secured rights against the 2014 Ford Focus, including

repossession and sale of the same, and that the order shall be effective immediately notwithstanding

the provisions of Fed.R.Bankr.P. 4001(a)(3), and for such other and further relief as may be

appropriate under the circumstances.

Date: April 22, 2021

S. Thomas Padgett (P31748)

DeBrincat, Padgett, Kobliska & Zick

Attorney for Creditor

34705 W. Twelve Mile Rd., Suite 311

Farmington Hills, MI 48331

(248) 553-4333

Michiganlawyer@aol.com

IN RE:	
BRIAN DEWAYNE SMELLEY,	Case No. 20-42656-mar Chapter 7
Debtor.	Hon. Mark A. Randon
ORDER GRANTING RELIEF FI	ROM THE AUTOMATIC STAY
THIS MATTER having come before the C	Court on Secured Creditor AmeriCredit Financial
Services, Inc., d/b/a GM Financial's Motion for Re	elief from the Automatic Stay, the Motion having
been served on the Debtor, Debtor's counsel, as	nd the Chapter 7 Trustee, and the Court being
otherwise fully advised in the premises; IT IS OR	DERED:
1. Secured Creditor AmeriCredit Finance	cial Services, Inc., d/b/a GM Financial, is hereby
granted relief from the automatic stay to pursue	e relief that may be available to it pursuant to
applicable law and the terms and provisions of the	contract for Debtor's purchase of one 2014 Ford
Focus motor vehicle, vehicle identification	number 1FADP3L93EL397790, including
repossession and sale of the vehicle.	
2. The entry of this Order shall be effect	ive immediately notwithstanding the provisions
of Fed.R.Bankr.P. 4001(a)(3). All other terms and	provisions of the automatic stay shall remain in
full force and effect.	
Order prepared by:	U.S. Bankruptcy Judge
S. Thomas Padgett (P31748) Attorney for Creditor	

BRIAN	DEWAYNE SMELLEY,	
	Debtor.	,

IN RE:

Case No. 20-42656-mar Chapter 7 Hon. Mark A. Randon

Address: 2691 E. Walton Blvd. Auburn Hills, MI 48326

Last four digits of Social Security No.: 8778

## NOTICE OF FILING OF SECURED CREDITOR'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY

Secured Creditor AmeriCredit Financial Services, Inc., d/b/a GM Financial, has filed papers with the court seeking relief from the automatic stay.

<u>Your rights may be affected.</u> You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one).

If you do not want the court to grant the Motion, or if you want the court to consider your views on the Motion, within 14 days from the date of this Notice, you or your attorney must:

1. File with the court a written response or an answer, explaining your position at 1:

United States Bankruptcy Court 211 W. Fort St. Detroit, MI 48226

If you mail your response to the court for filing, you must mail it early enough so the court will receive it on or before the date stated above. All attorneys are required to file pleadings electronically.

You must also mail a copy to:

S. Thomas Padgett, Esquire DeBrincat, Padgett, Kobliska & Zick 34705 W. Twelve Mile Rd., Suite 311 Farmington Hills, MI 48331

Stephen Parker, Esquire Attorney for Debtor 35 West Huron, Ste. 302 Pontiac, MI 48342 Homer W. McClarty Chapter 7 Trustee 19785 W. 12 Mile Rd., Ste. 331 Southfield, MI 48076

<sup>&</sup>lt;sup>1</sup> Response or answer must comply with F.R.Civ.P. 8(b), (c) and (e) 20-42656-mar Doc 55 Filed 04/22/21 Entered 04/22/21 11:01:55 Page 4 of 10

2. If a response or answer is timely filed and served, the clerk will schedule a hearing on the motion and you will be served with a notice of the date, time and location of the hearing.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

Date: April 22, 2021

S. Thomas Padgett (P31748)

DeBrincat, Padgett, Kobliska & Zick

Attorney for Creditor

34705 W. Twelve Mile Rd., Suite 311

Farmington Hills, MI 48331

(248) 553-4333

Michiganlawyer@aol.com

IN RE:	
BRIAN DEWAYNE SMELLEY,	Case No. 20-42656-mar
	Chapter 7
Debtor.	Hon. Mark A. Randon
/	

# MEMORANDUM OF LAW IN SUPPORT OF SECURED CREDITOR'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY

In support of its Motion, Secured Creditor AmeriCredit Financial Services, Inc., d/b/a GM Financial relies upon the provisions of Section 362 of the United States Bankruptcy Code.

Date: April 22, 2021

S. Thomas Padgett (P31748)
DeBrincat, Padgett, Kobliska & Zick
Attorney for Creditor
34705 W. Twelve Mile Rd., Suite 311
Farmington Hills, MI 48331
(248) 553-4333
Michiganlawyer@aol.com

IN RE:	
BRIAN DEWAYNE SMELLEY,	Case No. 20-42656-mar Chapter 7
Debtor.	Hon. Mark A. Randon
/	

#### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on April 22, 2021, true and correct copies of Secured Creditor AmeriCredit Financial Services, Inc., d/b/a GM Financial's Motion for Relief from the Automatic Stay, Memorandum of Law, Notice of Filing of Motion, Statement Regarding Corporate Ownership and proposed Order were served upon the following party electronically:

Stephen Parker, Esquire
Attorney for Debtor
Chapter 7 Trustee
35 West Huron, Ste. 302
Pontiac, MI 48342
Homer W. McClarty
Chapter 7 Trustee
19785 W. 12 Mile Rd., Ste. 331
Southfield, MI 48076

and upon the following party by depositing said copies in the U.S. Mail, postage prepaid:

Brian Smelley, Debtor 2691 E. Walton Blvd. Auburn Hills, MI 48326

Dated: April 22, 2021 \_\_\_\_\_\_\_

S. Thomas Padgett (P31748)
DeBrincat, Padgett, Kobliska & Zick
Attorney for Creditor
34705 W. Twelve Mile, Ste. 311
Farmington Hills, MI 48331
(248) 553-4333
Michiganlawyer@aol.com

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### Receipt for RD-108 Dealer Transaction

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RANDY WISE FORD
Address 968 S ORTONVILLE RD City
ORTONVILLE, MI 48462
Dealer License No. A2889
Odometer 049468 A
A = Actual mileage
B = Not actual mileage C = fixceeds mechanical limits of odometer

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First Secured Interest	Filing Date
AMERICREDIT FINANCIAL SERVICES PO BOX 1510 COCKEYSVILLE, MD 21030	01/29/2018
Second Secured Interest NONE	Filing Date

Dealer Comment: TAB NUMBER: 5707620



### **Vehicle Information**

Vehicle: 2014 Ford Focus Hatchback 5D ST 2.0L

14 Turbo

Region: Central

Period: April 20, 2021

VIN: 1FADP3L93EL397790

Mileage: 97,500

Base MSRP: \$24,115

Typically Equipped MSRP: \$24,450

### NADA Used Cars/Trucks Values

	Base	Mileage Adj.	Option Adj.	Adjusted Value
Monthly				
Trade-In				
Rough	\$9,050	N/A	N/A	\$9,050
Average	\$10,125	N/A	N/A	\$10,125
Clean	\$10,975	N/A	N/A	\$10,975
Clean Loan	\$9,900	N/A	N/A	\$9,900
Clean Retail	\$13,600	N/A	N/A	\$13,600

### **Selected Options**

MONING CONTROL OF CONT	Trade-In/Loan	Retail
Bluetooth Connection	w/body	w/body
Aluminum/Alloy Wheels	w/body	w/body
Fog Lights	w/body	w/body
Steering Wheel Mounted Audio Controls	w/body	w/body